

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS**

Appellant: Kenji YOSHIOKA

Serial No: 09/534,441

Filed: March 24, 2000

For: EMERGENCY INFORMING
APPARATUS AND AN
EMERGENCY INFORMING
SYSTEM

Appeal No.

RECEIVED

APPELLANT'S BRIEF ON EX PARTE APPEAL

OCT 01 2003

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Technology Center 2600

Sir:

This is a brief for appealing the final rejecting of pending claims 1-26 of the above-identified application.

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REAL PARTY IN INTEREST

The real party in interest for this appeal is Matsushita Electric Industrial Co., Ltd. to whom the inventors assigned the invention per an Assignment recorded on March 24, 2000 with the Assignment Branch of the U.S. Patent and Trademark Office.

RELATED APPEALS AND INTERFERENCES

As far as is known, it is believed that there are no appeals or interferences that would directly affect or be directly affected by or have a bearing on the Board's decision on the pending appeal.

STATUS OF CLAIMS

Claims 1-16 were presented for prosecution with the filing of the instant application on March 24, 2000. A Preliminary Amendment dated March 1, 2002 added claims 17-23. In response to an Office Action dated August 15, 2002, claims 1, 9, 17 and 23 were amended, and claims 24-26 added. In an Office Action dated January 27, 2003, the examiner finally rejected all of the pending claims. A response to the final rejection Office Action, with no amendment to the claims, was submitted on May 27, 2003. In an Advisory dated July 24, 2003, the examiner maintained her final rejection of the claims. In response to the Advisory Action, a Notice of Appeal was filed July 25, 2003 for appealing the rejection of the pending claims of this application.

The claims at issue in this application and herein on appeal are claims 1-26, as reproduced in Appendix A.

STATUS OF AMENDMENTS

A response was filed subsequent to the final rejection Office Action dated January 27, 2003. There was no amendment to any of the claims in the response.

SUMMARY OF THE INVENTION

The instant invention, as set forth in independent claims 1, 9, 17, 23 and 24, relates to an emergency informing apparatus that operates an emergency communication means for informing an emergency responsive party that there is an emergency, when there is a command signal, and enables the user to conduct ordinary communication with a desired party, when there is no command signal.

In particular, claim 1 recites an emergency informing apparatus (1a-1f) for a vehicle that comprises: position detecting means (14) for detecting a position of the emergency informing apparatus in response to a command signal. [Page 6, lines 3-6 and 17-19]¹ There is also included in the emergency informing apparatus of claim 1 data generation means (12) including storing means (15) for generating emergency data including at least identification data of the vehicle and the called party data from the storing means, and the position in response to the command signal. [Page 17, line 20 to page 8, line 14] There is also a wireless telephone communication means that includes emergency communication means (12, 11, 2) for making a call with the called party data and the transmitting the emergency data to the called party in response to the command signal. [Page 6, lines 9-24; page 7, lines 7-19] An ordinary communication means (12, 5, 11, 2) is also included in the wireless telephone communication means for providing telephone communication with a desired party in response to a call in demand and a telephone communication with a calling party in response to a call from the calling party. [Page 9, lines 2-19] The controlling means (12) of the emergency informing apparatus operates the emergency communication means when the command signal exists, and operates the ordinary communication means when the command signal does not exist. [Page 9, line 2 to page 10, line 15] The emergency informing apparatus is mounted to and is part of the vehicle [page 6, lines 2-3], and is configured to enable the wireless communication means to effect ordinary telephone communication without having

¹ The designations of the different elements recited in the claims are in parentheses, while the pages of the disclosure that provide support are bracketed.

to disconnect the position detecting means (14) and/or the data generating means (12). [Fig. 1]

Claim 9 is similar to claim 1 in that the controlling means (12) recited therein would operate the emergency communication means (12, 11, 2) for making a call to the emergency called party for transmitting the emergency data to the call party, when a command signal exists, and would operate the ordinary communication means (12, 5, 11) for effecting telephone communication with a desired party, either by calling the desired party or in receipt of a call from the desired party, when the command signal does not exist. Claim 9 recites in particular that the wireless telephone network (104) includes a base station (101), and a predetermined station (103) for receiving the emergency data from the inventive telephone communication means, via a wireless telephone network. [Page 18, lines 9-23; Fig. 7]

The emergency informing apparatus of independent claim 17 defines an emergency communication unit (11) for making a wireless communication and transmitting the emergency data to a called party in accordance with the called party data, when an emergency condition is detected. [page 6, lines 9-24; page 7, lines 7-19] Moreover, a control unit (12) is defined in claim 17 for operating the emergency communication unit to make an ordinary communication with a desired party when an emergency condition is not detected. [Page 9, line 2 to page 10, line 15] Claim 18 depends from claim 17 and further defines the control unit (12) to disconnect the ordinary communication of the emergency communication unit (11) with the desired party, when an emergency condition is detected, and then to operate the emergency communication unit for making an emergency communication with the emergency called party data. [page 9, lines 20-23]

Independent claim 23 relates to an emergency informing system. It is similar to claim 17, and includes a wireless telephone network (104), a base station (103), and a predetermined station (101) for receiving and outputting the emergency data through the wireless telephone network. [Page 18, lines 17-24; Fig. 7]

Independent claim 24 defines an emergency informing apparatus that includes a communication unit (11) that allows a user in the vehicle to communicate telephonically with a desired party when there is no emergency, and for communicating with an emergency called party and transmitting the emergency data to the emergency called party when there is an emergency. [Page 6, lines 9-14; page 17, lines 7-19] The emergency informing apparatus of claim 24 further includes an operation circuit (5) that operates the communication unit (11) to effect a telephonic link with the desired party when a communication request is input to the operation circuit. [Page 10, lines 3-8; Fig. 1] A control unit (12) is further included in the emergency informing apparatus of claim 24 for operating the communication unit (11) to disconnect the link to the desired party if the user is communicating with the desired party when an emergency is detected, and to then connect to and inform the emergency call party of the emergency. [Page 9, lines 20-23]

The instant invention, therefore, in general relates to an emergency informing apparatus that has a control circuit that controls the operation of a communication circuit to enable the user in the vehicle to communicate with a desired party, when there is no emergency, and to communicate with an emergency party when there is an emergency, and furthermore disconnect the link between the user and the desired party if there is an ongoing conversation between them, in order to connect to the emergency party for informing the same that an emergency has occurred.

Other aspects of the instant invention are set forth in the dependent claims.

ISSUES

The examiner has maintained her rejection of claims 1-17 and 19-26 under 35 U.S.C. 102(e) as being anticipated by Tendler PCT publication WO98/706229. The examiner has moreover rejected claim 18 under 35 U.S.C. 103(a) as being unpatentable over Tendler in view of Tognazzini U.S. patent 5,914,675.

In view of the examiner's rejections, the issues presented herein on appeal are the following:

1. Is the 35 U.S.C. 102(e) rejection of the above-noted claims in view of Tandler sustainable?
2. Is the 35 U.S.C. 103(e) rejection of claim 18 in view of the combination of Tandler and Tognazzini sustainable?

GROUPING OF CLAIMS

As discussed above, there are five independent claims under appeal. They are claims 1, 9, 17, 23 and 24. In the hereinbelow Argument section, in addition to those independent claims, Appellant will also argue separately the patentability of claims 2-3 which depend from claim 1, claims 10-11 and 13-16 which depend from claim 9, and claims 20-22 which depend from claim 17. Thus, Appellant respectfully submits that all of the claims do not stand or fall together, but rather that the patentability of each of the claims to which discussion is to be had hereinbelow should be considered independently.

ARGUMENT

Issue 1

Is each of the claims 1-17 and 19-26 anticipated by Tandler WO98/06229 under 35 U.S.C. 102(e)?

"Anticipation under 35 U.S.C. 102(e) requires that each and every element as set forth in the claim is found either expressly or inherently described, in a single prior art reference". So held the CAFC in In re Robertson, 169 F.3d 743, 746 (Fed. Cir. 1999).

Claim 1 recites a wireless telephone communication means that includes "emergency communicating means for making call with called party data and transmitting emergency data to a called party indicated by the called party data in

response to a command signal” and “ordinary communication means for providing telephone communication with a desired party in response to a calling demand and telephone communication with a calling party in response to a call from the calling party”. The emergency informing apparatus of claim 1 further includes “controlling means for operating the emergency communication means when the command signal is exist and operating the ordinary communication means when the command signal is in existent.” Claim 9 similarly recites the limitations just noted.

Tendler, with reference to the sole figure, discloses a cellular phone 10 that is connected to an EVLS (Emergency Vessel/Vehicle Location System) and dialer module 20. The EVLS and dialer module 20 in turn includes an EVLS board 22 (not labeled in the figure) and a dialer and activation detector 24. According to Tendler, module 20 is coupled between the key pad 12 and the cellular phone transceiver so as to be able to interrupt selected keypad signals prior to transmission to the transceiver of the phone. Being interposed between the keypad and the transceiver, module 20 can interrupt and replace the keypad commands input to keypad 12 by the user. (See page 12, last full paragraph of Tendler) Thus, when a user wants to dial an emergency number, for example 911, that number is routed by means of line 62 to the dialer and activation detector 24 of module 20, which can take either the set number to be dialed as input thereto from line 32 or a number that is to be dialed within a certain cell area per line 34 shown in the drawing. Dialer and activation detector 24 would then output the dial command and the telephone number to be called on line 60 back to the transceiver so that it is actually the telephone number selected by the dialer and activation detector 24 that would be called from the transceiver of the cellular phone. (Page 14, lines 15-26.) A synthesized voice message, such as that disclosed on page 15, lines 1-4, is then sent from the EVLS board 22 to the modulator of cellular phone 10, per shown by arrow 30 in the drawing, so that a synthesized predetermined emergency message is output to the party at the phone number determined by dialer and activation detector 24.

Instead of being activated by the user by inputting an emergency number such as 911, the EVLS and dialer module 20 can be activated externally, such as by the

different activation signals represented by designation numbers 40, 42, 46, 48, 50 and 52 shown in the figures. In any event, either by a user or by the external activation, the cellular phone 10 is caused to go off-hook by the dialer and activation detector 24 to dial the appropriate number, and thereafter the transmitter section of the cellular telephone is caused to output the appropriate emergency message sent by the EVLS board 22. (Page 15, lines 15-24)

Tendler therefore does not disclose any controlling means that operates the emergency communication means when a command signal exists for transmitting emergency data to a called party and operates the ordinary communication means to allow non-emergency communication to and from a desired party when the command signal does not exist. Rather, Tender teaches that his cellular phone must not be communicating when reporting an emergency, since the phone has to first go off-hook before the synthesized emergency message from the EVLS board 22 may be broadcast. See page 14, lines 15-20 and also page 15, lines 17-24.

Claims 17 and 23 each are similar to claims 1 and 9 in that the control unit defined in those claims would operate the emergency communication unit for making an ordinary communication with a desired party when an emergency condition is not detected. Tendler does not teach such.

Claim 24 recites a communication unit that allows the user in the vehicle to communicate with a desired party when there is no emergency and for communicating with the emergency called party and transmitting emergency data to the emergency called party when there is an emergency. Claim 24 furthermore recites an operation circuit that operates the communication unit to effect a telephonic link with the desired party when a communication request is input to the operation circuit by the user. Moreover, the control unit of claim 24 would disconnect the link to the desired party if the user is communicating with the desired party when an emergency is detected, so that the emergency called party may be connected for the report of the emergency. Neither the operation circuit nor the control unit as defined in claim 24 is disclosed in Tendler.

Accordingly, appellant respectfully submits that since limitations recited in the independent claims are not disclosed or suggested in Tendler, the instant invention, as defined by the independent claims, is not anticipated by Tendler. Putting it differently, Tendler fails to disclose or suggest the controlling means for operating any one of the emergency communication means and the operation communication means according to the existence or inexistence of a command signal, for Tendler clearly requires that his telephone 12 to go off-hook to dial the appropriate emergency telephone number, when the dialer and activation detector 24 detects an external activation signal.

It may be argued that, while the dialer and activation detector 24 detects no external activation signal, the phone 12 of Tendler is available for an ordinary communication.

Yet if the phone 12 is being used for telephone communication with a third party, either called or calling, when the dialer and activation detector 24 detects an external activation signal, then even though the dialer and activation detector 24 attempts to transmit the dial command and the appropriate telephone number to phone 12, phone 12 does not and could not dial the appropriate telephone number because phone 12 already is in communication with the third party.

That is, the essence of the teachings of Tendler is that telephone 12 dials the appropriate telephone number whenever an external activation signal is detected. But it is impossible to know when the happening that causes the external activation would occur so that, in Tendler, even assuming that phone 12 may be available for an ordinary telephone communication, telephone 12 must be ready and be in an on-hook condition. Thus, the use of phone 12 for an ordinary telephone communication is inconsistent with the essence and spirit of the teachings of Tendler.

In contrast, claims 1 and 9 of the present invention comprise, as a patentable feature, the following: when the command signal is existent even though the operation communication means is operated by the control means to make

telephone communication with a desired party or a calling party, the control means automatically causes the operation communication means to stop operation so as to automatically operate the emergency communication means to make a call with the called party data and transmit the emergency data to a called party indicated by the called party data in response to the command signal.

As a result, it is possible to transmit the emergency data to the called party when the command signal is existent while the operation communication means makes telephone communication with a desired party or a calling party.

The instant invention therefore makes it compatible for both emergency informing operation and ordinary telephone communication, by providing the control means to have the function of operating both the emergency communication means and the operation communication means according to the existence or inexistence of the command signal.

Appellant therefore respectfully submits that Tendler fails to disclose or suggest such control means and the effects thereof, as defined by claims 1 and 9. Accordingly, Appellant further respectfully submits that claims 1 and 9 of the present invention each are patentably distinguishable over Tendler.

Similarly, claims 17 and 23 of the present invention each recite an emergency communication unit and control unit which have substantially the same patentable feature in claims 1 and 9. Accordingly, claims 17 and 23 are also patentably distinguishable over Tendler. Furthermore, as discussed above, claim 24 of the present invention defines a communication unit, an operation circuit and a control unit that have substantially the same patentable feature of claims 1 and 9. Claim 24 accordingly is likewise patentably distinguishable over Tendler.

Tendler does not disclose any interface means for interfacing the ordinary communication means with an external unit as defined in claims 2, 10 and 20, which depend from independent claims 1, 9 and 17, respectively. There does not appear

to be anything disclosed in the Background of the Invention or the Summary of the Invention, as asserted by the examiner, that conceivably could be considered as an interface means for interfacing phone 10 with an external unit.

Nor does Tendler disclose or suggest any data converting means for converting data in the telephone communication between the interface means and the telephone communication means, as defined in claims 3, 11 or 21, which depend from claims 2, 10 and 20, respectively.

There is also no disclosure or suggestion in Tendler of any hands free communication means for providing sound communication between a user and the ordinary communication means, as defined in claims 5-8, 13-16 and 22. Again, despite the assertion made by the examiner, there does not appear to be any teaching or suggestion in the Background of the Invention or the Summary of the Invention sections of Tendler that discloses such hands free communication for satisfying an anticipation rejection. Quite the contrary, the figure of Tendler shows a cellular phone, which obviously requires a user to hold the phone close to his ear and mouth.

In view of the above, Appellant respectfully submits that the rejection of claims 1-17 and 19-26 as being anticipated by Tendler under 35 U.S.C. 102(e) is not sustainable. Moreover, Appellant further respectfully submits that in addition to the independent claims 1, 9, 17 and 23-24, the patentability of each of dependent claims 2-3, 10-11, 13-16 and 20-22 discussed above should be adjudged separately, as the prior art also fails to disclose or suggest the limitations of those claims per the above discussion.

Issue 2

Appellant respectfully submits that claim 18 is not obvious over the combination of Tendler and Tognazzini U.S. patent 5,914,675.

Claim 18, which depends from claim 17, defines the emergency communication unit to be used to make an ordinary communication with a desired party. But the control unit would disconnect the ordinary communication when an emergency condition is detected, and then operates the emergency communication unit to make an emergency communication with the to be called party data.

In rejecting claim 18, the examiner relied upon Tognazzini, specifically its Fig. 2 and column 7, lines 9-67.

Tognazzini does not disclose the disconnecting of an ordinary communication, so that an emergency communication may be made. Rather, as disclosed in column 7, lines 36-42, if the telephone call is already in progress, then the stored G.P.S. data is transmitted. And if a call is not in progress, then the control processor will initiate a telephone call with the emergency receiver call station 12. Thus, Tognazzini does not teach, or suggest the making of an ordinary phone call to a desired party, the disconnection of that ordinary call when an emergency situation is detected, and the making of an emergency communication call thereafter.

Accordingly, Appellant respectfully submits that claim 18 is unobvious over the combination of Tendler and Tognazzini.

In summation, Appellant respectfully submits the prior art rejection of the pending appealed claims, as discussed in issues 1 and 2 above, not to be sustainable. Accordingly, Appellants respectfully requests that the examiner's rejections of pending claims 1-26 be reversed.

Respectfully submitted,



Louis Woo, Reg. No. 31,730
Law Offices of Louis Woo
717 North Fayette Street
Alexandria, VA 22314
Phone: (703) 299-4090

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APPENDIX A

1. An emergency informing apparatus for a vehicle comprising:
 - position detecting means for detecting a position of said emergency informing apparatus in response to a command signal;
 - data generation means including storing means for generating emergency data including at least identification data of said vehicle from said storing means, called party data from said storing means, and said position in response to said command signal;
 - wireless telephone communication means including:
 - emergency communicating means for making a call with said called party data and transmitting said emergency data to a called party indicated by said called party data in response to said command signal; and
 - ordinary communication means for providing telephone communication with a desired party in response to a calling demand and telephone communication with a calling party in response to a call from said calling party; and
 - controlling means for operating said emergency communication means when said command signal is exist and operating said ordinary communication means when said command signal is inexistent;
 - wherein said emergency informing apparatus is mounted to and is part of said vehicle; and
 - wherein said emergency informing apparatus is configured to enable said wireless telephone communication means to effect ordinary telephone communication without having to disconnect said position detecting means and/or said data generation means.
2. An emergency informing apparatus as claimed in claim 1, further comprising interface means for interfacing said ordinary communication means with an external unit.
3. An emergency informing apparatus as claimed in claim 2, further comprising data converting means for converting data in said telephone communication between said interface means and said telephone communication means.
4. An emergency informing apparatus as claimed in claim 1, further comprising automatic dialling means for registering telephone number data and supplying said calling demand and one of said registered telephone number data to said ordinary communication means to provide said telephone communication.

5. An emergency informing apparatus as claimed in claim 1, further comprising hands-free communication means for providing-sound communication between a user and the ordinary communication means.

6. An emergency informing apparatus as claimed in claim 2, further comprising hands-free communication means for providing sound communication between a user and the ordinary communication means.

7. An emergency informing apparatus as claimed in claim 3, further comprising hands-free communication means for providing sound communication between a user and the ordinary communication means.

8. An emergency informing apparatus as claimed in claim 4, further comprising hands-free communication means for providing sound communication between a user and the ordinary communication means.

9. An emergency informing system comprising:
a wireless telephone network including a base station; and
emergency informing apparatus for a vehicle including:
position detecting means for detecting a position of said emergency informing apparatus in response to a command signal;
data generation means including storing means for generating emergency data including at least identification data of said vehicle from said storing means, called party data from said storing means, and said position in response to said command signal; and
telephone communication means including:
emergency communicating means for making a call with said called party data and transmitting emergency data to a called party indicated by said called party data in response to said command signal; and
ordinary communication means for providing telephone communication with a desired party in response to a calling demand and with a calling party in response to a call from said calling party; and
controlling means for operating said emergency communication means when said command signal is exist and operating said ordinary communication means when said command signal is inexistent; and
a predetermined station for receiving and outputting said emergency data from said telephone communication means via said wireless telephone network;

wherein said emergency informing system is mounted to and is part of said vehicle; and

wherein said emergency informing system is configured to enable said telephone communication means to effect ordinary telephone communication without having to disconnect said position detecting means and/or said data generation means.

10. An emergency informing system as claimed in claim 9, wherein said emergency informing apparatus further comprises interface means for interfacing said ordinary communication means with an external unit.

11. An emergency informing system as claimed in claim 10, wherein said emergency informing apparatus further comprises data converting means for converting data in said telephone communication between said interface means and said telephone communication means.

12. An emergency informing system as claimed in claim 9, wherein said emergency informing apparatus further comprises automatic dialling means for registering telephone number data and supplying said calling demand and one of said registered telephone number data to said ordinary communication means to provide said telephone communication.

13. An emergency informing system as claimed in claim 9, wherein said emergency informing apparatus further comprises hands-free communication means for providing sound communication between a user and the ordinary communication means.

14. An emergency informing system as claimed in claim 10, wherein said emergency informing apparatus further comprises hands-free communication means for providing sound communication between a user and the ordinary communication means.

15. An emergency informing system as claimed in claim 11, wherein said emergency informing apparatus further comprises hands-free communication means for providing sound communication between a user and the ordinary communication means.

16. An emergency informing system as claimed in claim 12, wherein said emergency informing apparatus further comprises hands-free communication means for providing sound communication between a user and the ordinary communication means.

17. An emergency informing apparatus for a vehicle comprising:
a position detecting unit for detecting a position of said emergency informing apparatus;
a data generation unit for generating emergency data including at least identification data of said vehicle, called party data, and said position;
an emergency communication unit for making a wireless communication and transmitting said emergency data to a called party indicated by said called party data when an emergency condition is detected; and
a control unit for operating said emergency communication unit, wherein said control unit operates said emergency communication unit for making an ordinary communication with a desired party when an emergency condition is not detected;
wherein said emergency informing apparatus is mounted to and is part of said vehicle; and
wherein said emergency informing apparatus is configured to effect said ordinary communication without said position detecting unit and/or said data generation unit having to be disconnected.

18. The emergency informing apparatus as claimed in claim 17, wherein said emergency communication unit further makes an ordinary communication with a desired party, and said control unit disconnects said ordinary communication of said emergency communication unit when an emergency condition is detected, and operates said emergency communication unit for making an emergency communication with said called party data.

19. The emergency informing apparatus as claimed in claim 17, wherein said called party is a predetermined station for receiving said emergency data.

20. The emergency informing apparatus as claimed in claim 17, further comprising an interface for interfacing said emergency communication unit with an external unit.

21. The emergency informing apparatus as claimed in claim 20, further comprising a data converter for converting data in a telephone communication between said interface and said emergency communication unit.

22. The emergency informing apparatus as claimed in claim 17, further comprising a hands-free communication unit for providing sound communication between a user and the emergency communication unit.

23. An emergency informing system for a vehicle comprising:
a wireless telephone network including a base station; and
an emergency informing apparatus for a vehicle including:
a position detecting unit for detecting a position of said emergency informing apparatus;
a data generation unit for generating emergency data including at least identification data of said vehicle, called party data, and said position;
an emergency communication unit for making a wireless communication and transmitting said emergency data to a called party indicated by said called party data when an emergency condition is detected; and
a control unit for operating said emergency communication unit, wherein said control unit operates said emergency communication unit for making an ordinary communication with a desired party when an emergency condition is not detected; and
a predetermined station for receiving and outputting said emergency data through said wireless telephone network;
wherein said emergency informing system is mounted to and is part of said vehicle; and
wherein said emergency informing system is configured to effect said ordinary communication without said position detecting unit and/or said data generation unit having to be disconnected.

24. An emergency informing apparatus for a vehicle comprising:
a position detecting unit for detecting a position of said emergency informing apparatus;
a data generation unit including a memory for generating emergency data including at least identification data of said vehicle, at least one emergency called party, and the position from said memory;
a communication unit for allowing a user in said vehicle to communicate telephonically with a desired party when there is no emergency and for

communicating with said emergency called party and transmitting said emergency data to said emergency called party when there is an emergency;

an operation circuit for operating said communication unit to effect a telephonic link with said desired party when a communication request is input to said operation circuit by said user; and

a control unit for operating said communication unit to disconnect the link to said desired party if said user is communicating with said desired party when an emergency is detected, and to connect to and inform said emergency called party of the emergency.

25. The emergency informing apparatus of claim 24, wherein said emergency apparatus is mounted to said vehicle.

26. The emergency informing apparatus of claim 24, further comprising:

a switch which when activated by said user causes said control unit to operate said communication unit to transmit to said emergency called party at least data indicative of the occurrence of the emergency.

CITATIONS

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